

PROGRAMMATIC AGREEMENT

AMONG THE

**United States Department of Agriculture, Forest Service
Pacific Southwest Region,**

**United States Department of the Interior, Bureau of Land Management
California State Office,**

United States Department of the Interior, Fish and Wildlife Service

California Department of Forestry and Fire Protection,

California State Historic Preservation Officer,

and

Advisory Council on Historic Preservation

REGARDING

*COMPLIANCE WITH SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT FOR
FEDERALLY FUNDED PROGRAMS*

*ADMINISTERED BY THE
CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION
ON NONFEDERAL LANDS IN CALIFORNIA*

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PROGRAMMATIC AGREEMENT

Among the:

United States Department of Agriculture, Forest Service, Pacific Southwest Region,
United States Department of the Interior, Bureau of Land Management, California State Office,
United States Department of the Interior, Fish and Wildlife Service,
California Department of Forestry and Fire Protection,
California State Historic Preservation Officer,
and
Advisory Council on Historic Preservation

*REGARDING
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CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION
ON NONFEDERAL LANDS IN CALIFORNIA*

WHEREAS, the California Department of Forestry and Fire Protection (CDF) receives federal funds from the United States Department of Agriculture, Forest Service, Pacific Southwest Region (USFS), the United States Department of the Interior, Bureau of Land Management, California State Office (BLM), and the United States Department of the Interior, Fish and Wildlife Service (USFWS), (collectively referenced hereafter as Federal Agencies) to administer programs implementing projects located on nonfederal lands in California; and

WHEREAS, federal funding of land management activities administered by the CDF on nonfederal lands in California (hereafter, federally funded programs) meets the definition of “undertaking” specified in Section 301(7) of the National Historic Preservation Act (NHPA; 16 USC 470); and

WHEREAS, the Federal Agencies have determined that federally funded programs may affect properties either included in or eligible for inclusion in the National Register of Historic Places (National Register) and have consulted with the California State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (Council), and the CDF pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the NHPA; and

WHEREAS, the Federal Agencies have consulted and agree that the USFS has lead federal agency responsibility for compliance with the terms of this Programmatic Agreement (PA); and

WHEREAS, the USFS as lead federal agency has consulted with the Table Bluff Reservation Wiyot Tribal Historic Preservation Officer (Table Bluff THPO), the Timbisha Shoshone Tribal Historic Preservation Officer (Timbisha THPO), the Yurok Tribal Historic Preservation Officer (Yurok THPO) (collectively referenced as THPOs), and other Indian tribes, organizations, and interested Native Americans pursuant to 36 CFR 800.3(f), using the Native American Contact List defined in Appendix A; and

WHEREAS, this PA applies to those federally funded projects administered by CDF on nonfederal lands within the state of California, including state, local government, private, and other lands not owned by the federal government; and

WHEREAS, the Federal Agencies, the SHPO, and the Council agree that technical assistance, environmental planning, contract administration, project review and approval, and other tasks necessary to deliver the federally funded programs within California are most efficiently carried out by the CDF; and have invited the CDF to participate in the consultation and to be a signatory to this PA; and

WHEREAS, the CDF has Lead Agency responsibility pursuant to the California Environmental Quality Act (CEQA; PRC Section 21000 *et seq.*) for review and approval of projects permitted, funded, or administered by the CDF, including the individual actions of federally funded programs; and

WHEREAS, the individual actions of the federally funded programs covered by this PA also qualify as projects defined in the CEQA, and the CDF intends to use the provisions of this PA to address the applicable Lead Agency requirements of the CEQA; and

WHEREAS, the USFS, CDF, SHPO, and the Council, on December 4, 1996, executed the Programmatic Agreement among the California Department of Forestry and Fire Protection, California State Historic Preservation Officer, United States Department of Agriculture – Forest Service, Pacific Southwest Region, and Advisory Council on Historic Preservation Regarding Implementation of USDA Forest Service-Funded Cost-Share Programs Administered by the California Department of Forestry and Fire Protection on Private Lands in California (December 1996 PA), and the signatories to the December 1996 PA consulted and determined that it should be terminated and superseded by this PA in order to include federally funded programs administered by the BLM and USFWS;

NOW, THEREFORE, the CDF, the USFS, the BLM, the USFWS, the SHPO, and the Council agree that the federally funded programs covered by this PA shall be implemented in accordance with the following stipulations in order to take into account the effects of these federally funded programs on historic properties; and that such implementation satisfies the Federal Agencies' Section 106 NHPA responsibilities for all individual actions of these federally funded programs.

STIPULATIONS

The USFS, BLM, and USFWS, in coordination with CDF, shall ensure that, for the federally funded programs, the following stipulations are carried out:

I. Definition of Terms

The terms used in this PA, or that may be relevant to interpreting or implementing this PA, are defined in Appendix I.

II. Consultation with Native Americans

The CDF, under the authority of the Federal Agencies, shall ensure that applicable THPOs, Indian tribes, local Native American tribal groups and individuals, and the Native American Heritage Commission (NAHC) are consulted during the planning and review process for all individual projects that have potential to affect properties of traditional cultural and religious significance to Indian tribes. The purpose

of this consultation is to identify such historic properties within a project's Area of Potential Effect (APE), and to solicit views of Indian tribes and Native Americans in developing measures to protect any such properties from adverse effects. The Native American consultation program stipulated in this PA shall be conducted in accordance with Appendix II: Native American Consultation Procedures for Federally Funded Projects Administered by CDF, and shall utilize the Native American Contact List, which is defined in Appendix I of this PA and described in Appendix II.

III. CDF Cultural Resources Plan

The CDF shall implement the attached plan for identifying and managing historic properties that may be affected by federally funded projects subject to this PA contained in Appendix III: Procedures for the Identification and Management of Cultural Resources Located on Federally Funded Projects Administered by CDF (hereafter referred to as the CDF Cultural Resources Plan).

IV. Identification of Cultural Resources

The CDF shall determine which federally funded projects have the potential to affect historic properties through the completion of a Preliminary Study in accordance with Section C of Appendix III.

A. The signatories agree that the federally funded projects listed in Section D, List of Exempt Practices, of Appendix III have little to no potential to affect historic properties and require no further review under this PA.

B. CDF shall ensure that the APEs for all federally funded projects that have the potential to affect historic properties are subjected to intensive cultural resource survey prior to implementation of such projects. During such investigations, the following tasks (also see Section E of Appendix III) shall be completed:

1. A current Archaeological Records Check made at the appropriate Information Center.
2. Written notification of the proposed project provided to Native Americans as defined in Appendix I and following the procedures described in Appendix II.
3. Prefield research conducted (see Appendix IV: Suggestions for the Conduct of Prefield Research to Support Cultural Resource Surveys for Federally Funded Projects Administered by CDF).
4. A CDF Archaeologist consulted to determine appropriate survey strategies.
5. An intensive survey for archaeological, traditional cultural, and historic resources conducted.
6. Avoidance or other protection measures developed.
7. Additional notification to Native Americans completed, if applicable.
8. Sites identified during the survey recorded.
9. A survey report meeting applicable professional standards prepared (see subsection C, below, and Appendix V: Cultural Resource Survey Report Form Used to Document Cultural Resource Surveys for Federally Funded Projects Administered by CDF for report format).
10. Site record forms comparable to DPR 422 (for archaeological sites) and DPR 523 (for historic sites) included, when appropriate.
11. Satisfactorily completed report reviewed, approved, and signed by a CDF Archaeologist.

C. All cultural resource surveys and effects recommendations shall be documented in a report meeting the applicable professional standards specified in *Archaeological Resource Management Reports: Recommended Contents and Format* (ARMR) (Office of Historic Preservation 1989) (see Section E of Appendix III and Appendix V). The report shall describe the project, its survey methods and findings, the survey coverage achieved, and clear enforceable protection measures when and as required by this PA;

and it shall include a map or maps showing the project area, areas surveyed, and locations of all identified cultural resources. Sites identified during the survey shall be recorded on CDF site forms comparable to DPR 422 for archaeological sites and DPR 523 for historic sites; these forms are approved by the Office of Historic Preservation. The report shall be reviewed and approved by a CDF Archaeologist prior to project implementation.

D. For projects on privately owned lands, CDF shall ensure that prior to project approval, appropriate landowners are notified regarding CDF's responsibilities under this PA, and are afforded the opportunity to comment on and participate in cultural resource work conducted pursuant to this PA (see Section G, Landowner Involvement, in Appendix III, the CDF Cultural Resources Plan) or pursuant to an agreement document executed in accordance with stipulations VI. or VII. of this PA.

E. The signatories agree that the federally funded programs covered by this PA do not provide sufficient funding to evaluate the National Register eligibility of sites identified during project surveys. National Register evaluations of identified sites are not required if CDF ensures that such historic properties are not affected or are not adversely affected (see Stipulation V, below) by any project subject to this PA.

V. Avoidance of Adverse Effects

The CDF shall ensure that all federally funded projects covered by this PA do not affect or do not adversely affect historic properties. This will be accomplished by identifying and recording historic properties within project APEs, and ensuring that avoidance measures are implemented for any such properties. Avoidance measures may include relocating proposed project activities outside boundaries of identified sites, changing the types of project activities to not affect the identified properties, establishing buffer zones, using a flag-and-avoid program, or implementing other effective, enforceable protection measures designed to ensure that effects or adverse effects to cultural resources do not occur. The CDF shall take into consideration the potential for future impacts such as erosion or illicit artifact collecting, in addition to the direct and indirect effects of project activities.

VI. Adverse Effects

This PA shall not apply to any federally funded projects that adversely affect historic properties. If, at any time, the CDF determines it is unable to either avoid cultural resources or to develop protection measures which ensure that they are not adversely affected, the CDF shall promptly contact the federal agency funding the project to determine if the project should proceed or be cancelled. If the federal agency decides to continue with the project, the federal agency shall initiate consultation with SHPO, and the Council if necessary, pursuant to 36 CFR 800 for that individual project.

VII. Inadvertent Discoveries and Effects

Prior to implementing any federally funded projects covered by this PA, the CDF shall inform the landowner(s), the Registered Professional Forester (RPF), work crews, contractors, and other key personnel that project activities must be stopped and CDF must be notified immediately if any cultural resources are discovered, or if any previously identified cultural resources have been inadvertently affected, during project implementation. In either event, the CDF, upon being so notified, shall ensure that all project activities in the vicinity of the inadvertent discovery or effect are stopped, and shall make all reasonable efforts to avoid or minimize harm to the discovery or affected cultural resource until the following procedures are completed (also see Section F of Appendix III):

A. CDF shall ensure that a professional archaeologist promptly conducts a preliminary assessment of the

inadvertent discovery or affected site to determine if it may be a historic property.

1. If the cultural resource is found not to be a historic property, it will be given no further consideration under this PA. Thereafter, the CDF may authorize the project to proceed.
2. If the professional archaeologist recommends the cultural resource may be a historic property, CDF shall develop and implement measures that will secure and protect the property from harm. Once the property is protected, CDF may authorize the project to proceed.
3. If the CDF cannot develop and implement such protective measures, it will secure and protect the property while suspending project activities, and promptly provide the funding federal agency with written documentation describing the manner in which CDF has addressed the inadvertent discovery or affected site. Within 14 days of receipt of CDF's documentation, the funding federal agency shall initiate consultation pursuant to 36 CFR 800.13(b).

B. If cultural resources of Native American concern have been discovered or inadvertently affected, the funding federal agency, in cooperation with the CDF, shall consult with the pertinent THPO, Indian tribes, and Native Americans in accordance with applicable federal law, regulations, and Executive Orders. If the discovery or inadvertent effect reveals human remains that may be Native American, the additional procedures outlined in Stipulation VIII, below, shall also be followed.

VIII. Treatment of Human Remains and Associated CalNAGPRA Items

Since the objective of this PA is to avoid adverse effects to sites, it is unlikely that human remains and/or associated California Native American Graves Protection and Repatriation Act (CalNAGPRA) items will be encountered during implementation of actions covered by this PA. Although unlikely, the possibility of encountering such items could result if Native American archaeological sites are inadvertently discovered and exposed as a result of project operations. Prior to implementing any actions covered by this PA, the CDF shall inform the landowner(s), RPF, work crews, contractors, and other key personnel that project activities must be stopped and CDF must be notified immediately if any human remains and/or associated CalNAGPRA items are discovered during project implementation (see Section F of Appendix III). If any human remains and/or associated CalNAGPRA items are discovered or recognized during project implementation, CDF shall promptly notify the funding federal agency. The CDF shall ensure that the human remains and/or CalNAGPRA items are treated in accordance with the provisions identified in PRC Section 5097.98 and Section 7050.5(b) of the Health and Safety Code which require, among other duties, prompt notification to the County Coroner.

A. If the remains are of Native American origin, the CDF shall also contact the NAHC and the Most Likely Descendants, and shall follow Sections 8010-8030, the CalNAGPRA, of the Health and Safety Code. CDF shall give full consideration to recommendations made by the NAHC or Most Likely Descendants concerning options for the treatment of Native American remains.

B. There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the County Coroner has made the assessment specified in Health and Safety Code Section 7050.5(b)-(c). If the County Coroner recognizes pursuant to Section 7050.5(c) of the Health and Safety Code that the remains are or may be those of Native Americans, the requirements of Section 5097.98 of the Public Resources Code and CalNAGPRA regarding the treatment of Native American remains shall be followed.

IX. Collection and Curation of Archaeological Materials

Archaeological materials subject to the terms of this PA may be collected and curated only under the

following circumstances:

- A. when authorized pursuant to an agreement document executed in accordance with stipulation VI. of this PA; or
- B. pursuant to consultation under 36 CFR 800.13(b)(3), as prescribed by stipulation VII.A.3 of this PA; or
- C. when permitted as a result of compliance with stipulation VIII.B of this PA.

Otherwise, archaeological materials shall be left *in situ*, on-site, in an undisturbed condition. They may be examined and recorded *in situ* but must otherwise remain undisturbed.

X. Project Documentation

The CDF shall prepare written documentation for all federally funded projects administered under this PA. Documentation for exempt projects that, pursuant to Section A of Stipulation IV, do not have the potential to affect historic properties consists of a letter to the project file explaining the CDF's rationale for determining that a cultural resource survey was not required. For all other federally funded projects, the CDF shall ensure that a cultural resource survey report is completed in accordance with the provisions specified in Section E of Appendix III and the format provided in Appendix V. The CDF shall ensure that a complete, clean copy of each such report is forwarded, immediately upon approval, to the appropriate Information Center of the California Historical Resources Information System for permanent retention.

XI. Annual Review

The signatories shall conduct an annual review of this PA to ensure that CDF is implementing effective procedures to protect historic properties. This annual review shall consist of a report provided by CDF accounting for the previous year's activities and a meeting to discuss the effectiveness of the PA.

A. Each CDF program manager with responsibility for the administration of programs receiving federal funding shall compile an annual report for the review of this PA. These individual CDF program reports shall be provided to the CDF Archaeology Program Manager no later than January 31st for the preceding calendar year's projects. The reports shall consist of:

1. a complete listing of each project, contract, or grant that was implemented using federal funds,
2. for each project, identification of which agency provided the federal funding,
3. whether the project was determined to be exempt from cultural resource survey requirements or if a cultural resource survey was completed,
4. if a cultural resource survey was completed, the list should indicate whether or not cultural resources were identified,
5. if cultural resources were identified, whether or not they needed protection from project activities,
6. if protected, what measures were implemented, and
7. recommendations about the effectiveness of the PA or recommendations for changes that may make it more effective, if any such recommendations are made.

B. The CDF Archaeology Program Manager shall compile the individual program reports into a single annual report, and no later than February 28th, shall transmit a copy of the annual report to the Federal Agencies, the SHPO, and the Council to initiate the annual review.

C. The annual review by the signatories, which may be a meeting, a conference call, or some other mutually agreed upon format, shall usually be held in March after submission of CDF's annual report. The meeting shall generally review the previous year's activities and the effectiveness of the PA in helping to implement those activities. This annual review shall provide the opportunity to consider the possible need to develop an amendment to resolve or clarify identified issues and ensure the continued involvement of the Federal Agencies in their role to oversee the activities conducted by CDF on their behalf. The USFS shall be responsible for contacting the CDF, other Federal Agencies, the SHPO, the Council, and other interested parties that request to participate, in order to schedule the review.

XII. Qualifications of Personnel

All actions prescribed by this PA involving the identification and management of historic properties, and the reporting and documentation of such actions, shall be carried out by either a Professional Archaeologist, or an Archaeologically Trained Resource Professional working under the supervision of a CDF Archaeologist. The terms *Professional Archaeologist* and *Archaeologically Trained Resource Professional* are both defined in Appendix I. Further clarification on the minimum qualifications of personnel conducting work under this PA is provided in Section B of Appendix III.

XIII. Confidentiality

The signatories to this PA acknowledge that information about certain properties covered by this PA is subject to the provisions of Section 304 of the NHPA and Section 6254.10 of the California Government Code (Public Records Act) relating to the disclosure of archaeological, traditional cultural, historic, religious, and sacred site data. The signatories shall ensure that all such sensitive information is held confidential pursuant to these authorities. CDF shall inform the landowner(s), construction contractor(s), or other key project personnel of sensitive information on a need-to-know basis, and shall inform them of their responsibilities for maintaining data confidentiality.

XIV. Dispute Resolution

A. Any signatory to this PA, or a landowner upon whose land an project covered by this PA is located, may object in writing to the CDF regarding the manner in which the terms of this PA is being carried out.

1. Upon receipt of the objection, the CDF shall consult as follows to resolve the objection:
 - a. If the objection pertains to a specific project, the CDF, the federal agency funding the project, and the SHPO will consult and invite the landowner to participate in the consultation;
 - b. If the objection does not pertain to a specific project, but rather to the terms of the PA, the signatories will consult.
2. Consultation shall not exceed 30 days from the date the CDF received the objection.
3. If the objection is resolved through consultation, the CDF may proceed in accordance with the terms of the resolution.
4. If the objection cannot be resolved:
 - a. For a specific project, the funding federal agency, with the cooperation of the CDF, shall forward all documentation relevant to the objection to the Council, including the funding federal agency's proposed response to the objection;
 - b. About the terms of the PA, the USFS, with the cooperation of the CDF, shall forward all documentation relevant to the objection to the Council, including the USFS's proposed response to the objection.
5. Within 30 days after receipt of the documentation, the Council shall exercise one of the following options:
 - a. Advise the funding federal agency or the USFS that the Council concurs with the proposed

- response to the objection, whereupon the funding federal agency or the USFS will respond to the objection accordingly; or
- b. Provide the funding federal agency or the USFS with recommendations, which the funding federal agency or the USFS shall take into account in reaching a final decision regarding its response to the objection; or
 - c. Notify the funding federal agency or the USFS that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this case, the funding federal agency or the USFS shall ensure the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(c)(4).
6. Should the Council not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, the funding federal agency or the USFS may assume the Council's concurrence in its proposed response to the objection.
 7. The funding federal agency or the USFS shall take into account any Council recommendation or comment, any comments from the other signatories to this PA, and any consulting landowner comment, in reaching a final decision regarding the objection, and shall provide all other signatories and any consulting landowner with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
 8. The funding federal agency or the USFS may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
 9. The funding federal agency's or USFS's responsibility to carry out all actions under this PA that are not the subjects of the objection shall remain unchanged.

B. Should a member of the public submit to any signatory a written objection to the manner in which the terms of this PA is implemented, that signatory shall immediately notify the other signatories of the objection. Upon receipt, the USFS shall promptly consult with the other signatories to consider the objection and to take into account any comments provided by the signatories about the objection. The USFS shall establish a reasonable time frame for this consultation. Within 15 days following closure of the consultation period, the USFS will render a decision regarding the objection and respond to the objecting party. The USFS will promptly notify the other signatories of its decision in writing, including a copy of the USFS response to the objecting party. The USFS's decision regarding resolution of the objection will be final. Following issuance of its final decision, the USFS may authorize the item or action subject to dispute to proceed in accordance with the terms of its decision.

XV. Amendments and Addenda

A. Any signatory to this PA may propose amendments, whereupon all signatories shall consult to consider such amendment. This PA may be amended only upon written concurrence of all signatories.

B. Each appendix to this PA may be individually changed or updated through consultation of the signatories without requiring amendment to the stipulations of this PA, unless the signatories through such consultation decide otherwise.

C. The CDF may request that other federal agencies become signatory parties to this PA by the execution of an Addendum. The addition of any such federal agency without further changes to this PA does not require an amendment of the PA. The execution of such an Addendum by that federal agency, the USFS, the CDF, the SHPO, and the Council, and the participation of such agency in this PA, evidence that the agency has accepted the provisions of this PA to satisfy its requirements under

Section 106 and Section 110 of the National Historic Preservation Act, has afforded the Council a reasonable opportunity to comment on its funding of programs carried out by the CDF, and has taken into account the effects of its actions on historic properties. A sample Federal Agency Addendum form is attached as Appendix VI: Federal Agency Addendum to the Programmatic Agreement Regarding Cultural Resource Review Requirements for Federally Funded Programs Administered by the California Department of Forestry and Fire Protection on Nonfederal Lands in California.

XVI. Jurisdictions of this PA

This PA applies to those federally funded projects administered by CDF on nonfederal lands within California including state, local government, private, and other lands not owned by the federal government. The PA does not cover federally funded projects administered by CDF on tribal lands in California. Should CDF or an Indian tribe wish to administer a project upon such tribal lands, the federal agency funding the project shall be responsible for complying with 36 CFR 800.3 through 800.7, or with its own applicable agency Programmatic Agreement, with regard to the individual actions that would otherwise be covered by this PA.

XVII. Withdrawal and Termination

A. Any participating Federal Agency, except for the USFS, may withdraw from this PA by providing 30 days written notice to the other signatories, provided that the parties will consult for no more than 30 days prior to the Federal Agency's withdrawal to seek agreement on amendments or other actions that avoid withdrawal of participation. In the event of the withdrawal of a Federal Agency from participation, that Federal Agency shall comply with 36 CFR Section 800.3 through 800.7, or with an applicable agency Programmatic Agreement, with regard to individual projects covered by this PA.

B. The USFS, CDF, SHPO, or the Council may terminate this PA by providing 30 days written notice to the other parties, provided that the parties consult for no more than 30 days to seek alternatives to termination. Should consultation fail, the signatory proposing termination may terminate this PA by promptly notifying the other signatories in writing. In the event the PA is terminated, all participating Federal Agencies shall comply with 36 CFR Section 800.3 through 800.7, or with an applicable agency Programmatic Agreement, with regard to individual projects covered by this PA.

XVIII. Termination of the December 1996 PA

The December 1996 PA shall terminate and have no further force or effect on the last date that this PA has been executed by the Federal Agencies, CDF, SHPO, and the Council.

XIX. Effective Date

This PA shall take effect on the last date it has been executed by the Federal Agencies, the CDF, the SHPO, and the Council.

AUTHORIZED SIGNATURES OF PARTIES

Execution of this PA and implementation of its terms evidence that the USFS, the BLM, and the USFWS have afforded the Advisory Council on Historic Preservation a reasonable opportunity to comment on the individual projects of their federally funded programs administered by the CDF.

U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE:

By: /s/ Bernie Weingardt for _____ Date: 7/29/04 _____
Jack A. Blackwell, Regional Forester, Pacific Southwest Region

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT:

By: /s/ Mike Pool _____ Date: 5/25/04 _____
Mike Pool, State Director, California State Office

U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE:

By: /s/ Steve Thompson _____ Date: 7/20/04 _____
Steve Thompson, California Nevada Operations Manager

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION:

By: /s/ Andrea E. Tuttle _____ Date: 4/28/04 _____
Andrea E. Tuttle, Director

CALIFORNIA OFFICE OF HISTORIC PRESERVATION:

By: /s/ Stephen D. Mikesell for _____ Date: 8/5/04 _____
Milford Wayne Donaldson, State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION:

By: /s/ John M. Fowler _____ Date: 8/26/04 _____
John M. Fowler, Executive Director

APPENDIX I

DEFINITIONS

The following definitions of key words, phrases, and other terms used in this PA, and used in the practice of cultural resources management, are provided to improve clarity. The definitions in 36 CFR 800.16, 14 CCR Section 895.1, 14 CCR Sections 1530-15387, PRC Sections 21060-21069, and PRC 5020.1 also apply, and are incorporated by reference.

ADMINISTERED BY CDF: as used in this PA, *administered by CDF* refers to those federally funded projects and programs where CDF has Lead Agency responsibility pursuant to the California Environmental Quality Act (PRC Section 21000 et seq.) for environmental review and project approval.

ADVISORY COUNCIL ON HISTORIC PRESERVATION (COUNCIL): an independent federal agency which advises the President and Congress on historic preservation issues and administers the provisions of Section 106 of the National Historic Preservation Act.

ARCHAEOLOGICAL CLEARANCE: as used in this PA, *archaeological clearance* is a finding made by CDF that cultural resource review requirements have been satisfactorily completed. This term carries a recommendation to the CDF decision maker that CDF's obligations for cultural resource reviews have been met, and the professional archaeologists on staff at CDF are recommending project approval not be withheld due to archaeological, traditional cultural, and historic property concerns.

ARCHAEOLOGICALLY TRAINED RESOURCE PROFESSIONAL: a person who has successfully completed the initial (full) course of the Board of Forestry certified, CDF sponsored, archaeological training course entitled *Archaeological Site Recognition Training for Resource Professionals*, and who has kept this certification current through successful completion of a CDF sponsored refresher course at least once every five years, and who has demonstrated the ability to conduct professionally adequate cultural resource surveys and impact evaluations working in close association with a CDF Archaeologist.

ARCHITECTURAL RESOURCE: Any building, structure, district, or object constructed by humans, as these property types are defined by the National Park Service in Appendix IV of National Register Bulletin 16.

AREA OF POTENTIAL EFFECTS (APE): the geographic area, or areas, within which a project may directly or indirectly cause changes in the character or use of historic properties or historical resources, if any such properties exist.

CALIFORNIA REGISTER OF HISTORICAL RESOURCES (California Register): a state list to be used as an authoritative guide to identify the state's historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change pursuant to PRC Section 5024.1.

CaINAGPRA ITEMS: human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony that meet the definitions under the California Native

American Graves Protection and Repatriation Act (Health and Safety Code Section 8010-8030).

CDF ARCHAEOLOGIST: a professional archaeologist on staff or under contract to the California Department of Forestry and Fire Protection (CDF).

CULTURAL RESOURCE: a broad category that describes a wide variety of resources including archaeological sites, isolated artifacts, features, records, manuscripts, historical sites, traditional cultural properties, historical resources, and historic properties. As used in this PA, this term is intended to include all forms of archaeological, historical, and traditional cultural properties, regardless of significance (see Historic Property).

CURRENT ARCHAEOLOGICAL RECORDS CHECK: means a review of the State's archaeological and historic resource files conducted at the appropriate Information Center of the California Historical Resources Information System for the Area of Potential Effect (APE) of a project. The records check must have been conducted within five years prior to the date the CDF Director approves the project.

DETERMINATION OF ELIGIBILITY: a finding, through SHPO/THPO consensus or Keeper of the National Register determination, that the property meets the criteria for eligibility to the National Register of Historic Places, although not actually listed, and is afforded the same protection under Section 106 as a listed property; determinations of eligibility for the California Register are afforded similar consideration under CEQA.

EFFECT: in federal law, an undertaking has an effect on a historic property when the project may alter characteristics of the property that qualify it for inclusion in the National Register. For the purpose of determining effect, alteration to the property's location, design, setting, materials, workmanship, feeling, association, or use may be relevant, depending on a property's significant characteristics, and should be considered.

FEDERAL AGENCIES: as used in this PA, Federal Agencies means those federal agencies that provide funding to CDF to support programs. These currently include the United States Department of Agriculture, Forest Service, Pacific Southwest Region; the United States Department of the Interior, Bureau of Land Management, California State Office; and the United States Department of the Interior, Fish and Wildlife Service. As stated in Stipulation XV of this PA, additional federal agencies can be included (with an addendum to the PA) should, in the future, additional federal agencies provide CDF with federal funding to support projects on nonfederal lands in California.

HERITAGE RESOURCE: same as HISTORICAL RESOURCE.

HISTORIC LANDSCAPE: There are two categories of historic landscapes: rural historic landscapes and designed historic landscapes. A rural historic landscape is a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and/or natural features (National Register Bulletin No. 30). A designed historic landscape is a landscape that derives its significance as a design or work of art; was consciously designed and laid out by a master gardener, landscape architect, architect, or horticulturist based on design principles, or an owner or amateur using a recognized style or tradition; has a historical association with a

significant person, trend, event, etc. in landscape gardening or landscape architecture; or a significant relationship to the theory or practice of landscape architecture (National Register Bulletin No. 18). Historic landscapes also include traditional cultural landscapes based on ethnographic and cultural information about identified natural, vegetal, and cultural features of traditional significance (National Register Bulletin No. 38).

HISTORIC PROPERTY: means any prehistoric or historic district, site, building, structure, or object, and its associated artifacts, remains, features, settings, and records, that is either listed in or has been determined eligible for inclusion in the National Register; or, any property not yet evaluated to determine whether it is eligible for the National Register.

HISTORICAL RESOURCE: in state law, includes but is not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in other specific aspects of California life as stipulated in PRC Section 5020.1 (j).

INDIAN TRIBE: means an Indian tribe, band, nation, or other organized group or community which is recognized as having the status of and being eligible for the special programs and services provided by the United States to Indians (36 CFR 800.16(m)).

INTENSIVE CULTURAL RESOURCE SURVEY: means an investigation to determine the presence or absence of cultural resources within a given project area. It is the process to determine precisely what cultural resources exist in a given area. It describes the distribution of cultural resources, determines the number, type, location, and condition of individual cultural resources within the area, and records their physical extent. The documentation for the survey shall include the boundaries of the area surveyed, the methods used during the survey including a description of the survey coverage achieved, and a record of the precise location of all cultural resources identified within a project area.

LOCAL NATIVE AMERICANS: means those California Native American tribal organizations and individuals listed for the appropriate county or portion of a county on the most current version of CDF's *Native American Contact List*. The terms *Native American Contact List* and *Native Americans* are also defined in this PA.

LOCAL REGISTER OF HISTORICAL RESOURCES: a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution.

NATIONAL HISTORIC LANDMARK (NHL): a property formally designated by the Secretary of the Interior as having special importance in the interpretation and appreciation of the nation's history; NHLs receive additional protection under Section 106 (36 CFR 800.10) and Section 110 of the National Historic Preservation Act.

NATIONAL REGISTER CRITERIA: A property may be considered eligible for the National Register of Historic Places if it meets one or more of the following criteria (see 36 CFR 60.4):

- (a) Is associated with events that have made a significant contribution to the broad patterns of history and cultural heritage;
- (b) Is associated with the lives of persons important in the past;
- (c) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and

- distinguishable entity;
- (d) Has yielded, or may be likely to yield, information important in prehistory or history.

NATIONAL REGISTER OF HISTORIC PLACES (National Register): A list of districts, sites, buildings, structures, and objects maintained by the National Park Service to be of historical, cultural, architectural, archaeological, or engineering significance at the national, state, or local level, as authorized by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470 et seq.).

NATIVE AMERICAN ARCHAEOLOGICAL OR CULTURAL SITE: means any archaeological or other cultural resource that is associated with Native Americans. These sites must be identifiable by a specific physical location containing specific physical attributes. Native American archaeological or cultural sites include but are not limited to village sites, camp sites, petroglyphs, prehistoric trails, quarries, milling stations, cemeteries, ceremonial sites, or traditional cultural sites and properties.

NATIVE AMERICAN CONTACT LIST: means the list developed by CDF in consultation with the Native American Heritage Commission (NAHC) that identifies those Native Americans that must be notified or consulted pursuant to this PA. The list is organized by counties or portions of counties. It includes all federally recognized tribal governments and other California Native American tribal organizations or individuals that CDF has placed on the list based upon demonstrated knowledge concerning the location of archaeological or other cultural resources within California. The NAHC is also a required contact for each county to enable the NAHC to complete a check of its Sacred Lands File which is authorized by PRC Sections 5097.94(a) and 5097.95. CDF frequently updates the list to keep mailing addresses, telephone numbers, email addresses, and other information current. The list is available on-line at: <http://www.indiana.edu/~e472/cdf/contacts/NACL.htm> The list is also available through written request (preferably by e-mail) to CDF's Region offices or to a CDF Archaeologist.

NATIVE AMERICANS: means the Native American Heritage Commission and those local Native American tribal groups and individuals to be notified or consulted pursuant to this PA. The required local contacts are specified in the Native American Contact List, also defined in this PA.

NONFEDERAL LANDS: state, local government, private, and other lands not owned by the federal government.

OFFICE OF HISTORIC PRESERVATION: the state office headed by the State Historic Preservation Officer, charged with administering the national and state historic preservation programs for California.

PLAN: a detailed scheme, program, or method worked out beforehand for the accomplishment of an objective, a systematic arrangement of details.

POINT OF HISTORICAL INTEREST: an official state list of landmarks of local interest as stipulated in PRC Section 5021 and 5022.5. These resources are posted with historical signs by the Department of Transportation.

PRELIMINARY STUDY: as used in this PA, *Preliminary Study* means a preliminary analysis of a proposed CDF project to determine if potential impacts to cultural resources could result from project activities.

PROFESSIONAL ARCHAEOLOGIST: for the purpose of conformance with this PA, this means a person who holds at least a bachelor of Arts or Science degree in Anthropology or Archaeology from a college or university and has completed at least three years of professional experience in research, writing, or project supervision in archaeological investigation or cultural resource management and protection programs, in conformance with the current California State Personnel Board's specifications for an Associate State Archaeologist in the State Archaeologist Series.

PROJECT: in state law (14CCR Section 15378), a *project* means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

- 1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.
- 2) An activity undertaken by a person which is supported in whole or in part through public agency contacts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- 3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

See "Undertaking" for NHPA definition.

PRUDENT: wise in handling practical matters; exercising good judgment or common sense; careful in regard to one's own interests; careful about one's conduct.

REGISTERED PROFESSIONAL FORESTER (RPF): means a person who holds a valid license as a professional forester, issued by the California State Board of Forestry and Fire Protection, pursuant to Article 3, Chapter 2, Division 1, of the Public Resources Code.

SECTION 106: the section of the National Historic Preservation Act which requires that federal agencies take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation an opportunity to comment on such undertakings.

SIGNIFICANT HERITAGE RESOURCE: a heritage resource which meets one of the following criteria as stipulated in California Executive Order W-26-92 Section 3(C):

- 1) listed in or potentially eligible for inclusion in the National Register of Historic Places; or
- 2) registered or eligible for registration as a state historical landmark or point of historical interest; or
- 3) registered or eligible for listing in a California Register of Historical Resources in accordance with procedures and criteria developed by the State Historical Resources Commission.

STATE HISTORIC PRESERVATION OFFICER: head of the Office of Historic Preservation; the appointed official in each state and territory charged with administering the national historic preservation program, pursuant to the National Historic Preservation Act, at the state level.

STATE HISTORICAL LANDMARK: an official state list of landmarks of statewide significance pursuant to PRC Section 5021.

SUBSTANTIAL ADVERSE CHANGE: demolition, destruction, relocation, or alteration such that the significance of a historical resource would be impaired as specified in PRC Section 5020.1 (q).

TRADITIONAL CULTURAL PROPERTY: a district, site, building, structure, or object that is valued by a human community for the role it plays in sustaining the community's cultural integrity. Generally a place that figures in important community traditions or in culturally important activities. May be eligible for inclusion in the National Register (see National Register Bulletin No. 38).

TRIBAL LANDS: means those lands held in fee by Indian tribes, and those lands held in trust by the United States of America for American Indians and Indian tribes, and administered and managed by the Department of Interior, Bureau of Indian Affairs.

UNDERTAKING: pursuant to Section 301 (7) of the National Historic Preservation Act, a project, or activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including:

- (a) those carried out by or on behalf of the agency;
- (b) those carried out with federal financial assistance;
- (c) those requiring a federal permit, license, or approval; and
- (d) those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

See "Project" for CEQA definition.

APPENDIX II

NATIVE AMERICAN CONSULTATION PROCEDURES FOR FEDERALLY FUNDED PROJECTS ADMINISTERED BY CDF

Introduction

The CDF is required by Stipulation II of this PA, Section 101(d)(6)(B) of the National Historic Preservation Act, state law (see PRC Section 21104) and state regulations (see 14 CCR Section 15064.5) to consult with Indian tribes, the Native American Heritage Commission (NAHC), and local Native American organizations during the review of certain projects. This Appendix provides CDF project managers with specific procedures to carry this out. CDF maintains a *Native American Contact List* that provides the appropriate local points of tribal contact for consultation pursuant to this PA. The list is organized by counties or portions of counties, and identifies the required contacts for the area in which the project is located. The NAHC is a required contact for each project, in addition to the appropriate Indian tribes and local Native Americans. The list is available on-line at: <http://www.indiana.edu/~e472/cdf/contacts/NACL.htm>

Consultation Procedures Statement

CDF shall consult with the NAHC, listed local tribes, and Indian tribes that may ascribe traditional cultural and religious value to historic properties for any CDF project that has the potential to cause significant impacts to a *Native American Archaeological or Cultural Site* as defined in this PA. Resources of concern that require Native American consultation include, but may not be limited to, prehistoric or ethnohistoric archaeological sites, traditional cultural properties, such as sacred places and gathering localities, and Native American historic sites.

Consultation shall be initiated during planning and prior to broad scale activities or specific projects. State agencies consult with Indian tribes and local Native Americans and individuals, and federal law requires consultation with federally recognized and other Indian tribes, because cultural resources of significance to Indian tribes deserve full consideration in the project planning and review process, and tribes possess a special perspective on, and relationship to, these resources.

Definition of Consultation

Consultation is defined in the Council's regulations as "the process of seeking, discussing, and considering the views of other participants, and where feasible, seeking agreement with them regarding matters arising in the Section 106 process" (36 CFR 800.16[f]).

Consultation with Native Americans means affording timely notice and opportunity to comment on a proposed CDF project and working with them to resolve concerns about the effects of CDF projects on historic properties. It is also an opportunity to request information on specific cultural resources that may be impacted by a proposed project. Receipt and consideration of their written or verbal comments, views, and concerns prior to project approval are the essence of consultation. CDF project managers are encouraged to correspond and provide maps of the location of the proposed project. Direct contacts through telephone calls, e-mail correspondence, and face-to-face meetings facilitate the development of mutual trust and encourage the exchange of information and should be used when circumstances warrant.

Critical to successful consultation is listening to, and actively considering, the views expressed by Indian tribes and local Native Americans. A principal goal of consultation is to provide Native Americans a reasonable opportunity to express their views on a CDF project. Although face-to-face meetings are not required for every project, the value of personal contact should not be overlooked.

When the CDF independently discovers that Native American people may have concerns about a proposed CDF project, the CDF manager should investigate and consult. In those instances, telephone calls and face-to-face meetings (in an office or out at the project site) should be completed to gather information, answer questions, listen to concerns, and give consideration to any recommendations provided by concerned/interested Native Americans.

Typically, consultation regarding CDF projects can be completed in a series of steps. The first step, called *Initial Consultation*, is intended to provide notice of a proposed project and request information about cultural resources known or thought to exist within or adjacent to the project area. The second step, called *Second Consultation*, is taken when known prehistoric or historic Native American cultural resources may be affected by the project.

Initial Consultation

To complete the Initial Consultation, the CDF project manager shall send correspondence with maps to the NAHC and to all the appropriate local tribal contacts on the CDF Native American Contact List. The CDF Archaeology Program recommends two map attachments: a vicinity map, and a detailed project map. A copy of the appropriate segment of the USGS 7.5' quadrangle will suffice. To better facilitate communication, the correspondence should contain:

1. an introductory statement of purpose,
2. a brief description of the proposed project,
3. a request for information on archaeological or cultural sites that might exist in the project area,
4. information on when the project is likely to begin,
5. the name, address, and phone number of the appropriate CDF person to contact,
6. information on the time frame to submit written comments (indicate that the CDF would appreciate receiving comments at least within 30 days),
7. a statement that encourages participation in the project review process.

The NAHC will check its Sacred Lands File and reply to the requestor if sacred lands sites that could be affected are identified.

Second Consultation

A second consultation step must be completed for a CDF Project with a *Native American Archaeological or Cultural Site* in an area that might be affected. If the project area is changed to exclude archaeological sites, and such sites will not be affected, or if archaeological sites are identified, but are historic representations of Euro-American era or non-Indian resources, the second notice is not necessary.

The second step provides clear notice that a proposed project may affect Native American archaeological or other cultural resources. It further provides the consulted Indian tribes and local Native Americans the opportunity to submit comments concerning site stewardship, protection, or management for the CDF to consider.

To complete the second consultation, correspondence with attached project and impact specific maps shall be sent to the NAHC and to appropriate local tribal contacts on CDF's Native American Contact List. Two maps are recommended attachments to the correspondence: a vicinity map and a detailed project/impact specific map. A copy of the appropriate segment of the USGS 7.5' quad will usually suffice for the project map. The substance of the correspondence shall include:

1. notification that archaeological resources are present in the proposed project area,
2. a brief project description,
3. a brief description of the identified archaeological and/or cultural resources,
4. the proposed protection measures,
5. an invitation to submit written comments to the CDF for its consideration prior to project approval,
6. name, address, and phone number of the appropriate CDF staff person to receive comments,
7. the date or timeframe for submitting written comments (normally this will be at least 30 days from the date of the CDF correspondence, although this time-frame may be shortened if direct contact is made with all appropriate Indian tribes and local Native Americans on the list, and confirmation is obtained that they have no concerns with the amended project).

Sometimes the initial and second consultation may be completed in a single step. This is the case if the CDF knows that cultural resources are present and how they will be treated. Although it is not a requirement to complete this work in two steps, the usual procedure is to send the first notice prior to the completion of a cultural resource survey, and then a second notice after all survey work has been finished and an initial plan for the treatment of cultural resource impacts is being developed.

Additional Consultation Efforts

The CDF shall conduct additional Native American consultation beyond Initial and Second Consultation, if it is judged to be appropriate and necessary. The purpose here is to fully evaluate potential effects, and provide the NAHC and Indian tribes and local Native Americans additional opportunity to participate in the project review process. For example, this type of consultation might include field meetings with appropriate tribal representatives, Native American persons, or groups to inspect archaeological resources and prescribed CDF treatments.

Consultation shall take place in sensitive instances of inadvertent discovery of Native American human remains and CalNAGPRA items (see Health and Safety Code Section 7050.5 and PRC Section 5097.98) (see Stipulation VIII). If discovered remains are of Native American origin, the CDF shall also contact the NAHC and the Most Likely Descendants, and shall follow Sections 8010-8030, the California Native American Graves Protection and Repatriation Act, of the Health and Safety Code. CDF shall give full consideration to recommendations made by the NAHC or Most Likely Descendants concerning options for the treatment of Native American remains.

During planning and review of federally funded projects, CDF may encounter other types of situations that will require additional consultation efforts. For example, CDF could learn that an Indian tribe not currently included on CDF's Native American Contact List ascribes traditional religious and cultural significance to a historic property that may be affected by the proposed project. In this situation, CDF and the federal agency funding the project shall consult with the Indian tribe making such a claim. This procedure will ensure compliance with the NHPA and its implementing regulations which require consultation with any Indian tribe that ascribes traditional religious and cultural significance to historic

properties that may be affected by a project.

Documentation

The CDF shall keep documentation of all Native American consultation in the project file, and be prepared to demonstrate compliance with applicable state law and regulation.

Consultation Limitations

If the CDF project manager receives requests from the NAHC and/or local Native Americans that appear to be outside the primary topic for consultation (potential impacts to cultural resources), a CDF Archaeologist should be contacted for assistance.

The federal government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with an Indian tribe must, therefore, recognize the government-to-government relationship between the federal government and Indian tribes. As such, upon receipt of a written request from any Indian tribe or officially designated representative of an Indian tribe, to consult with the federal agency funding the project in lieu of, or in addition to, CDF, CDF shall forward the request to the funding federal agency. When an Indian tribe so requests, the federal agency funding the project will consult with that Indian tribe in coordination with CDF.

Payment of Fees

The CDF's project manager may receive a request from Indian tribes or local Native Americans for payment of fees for consultation. This section is intended to provide direction on how to respond to such requests. The CDF's project managers should recognize that in many instances, Native American people are being asked to volunteer their time to provide CDF with information. Accordingly, the CDF should consider steps to overcome financial impediments that prevent Indian tribes from effectively participating in the consultation process. These steps may include scheduling meetings in places and at times that are convenient for the consulting parties.

The purpose of consultation is to give Indian tribes and Native Americans an opportunity to present their interests and concerns to a lead agency. In this relationship, the state and federal agency's obligation is to seek and consider the views of participating Indian tribes and local Native Americans. This means an agency must make a good faith effort to solicit the views of Indian tribes and local Native Americans and factor these views into the final agency decision. The consultation requirement, thus, gives an Indian tribe the ability to advocate an outcome it would like to see the agency take in the final project decision.

When an agency seeks the views of an Indian tribe to fulfill the agency's legal obligation to consult, the agency is not required to pay the tribe for providing its views. The tribe is acting as a responsible agency or an agency with special expertise under CEQA. CEQA does not give agencies acting in these roles authority to charge fees for their response to consultation. If the agency has made a reasonable and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult, and is free to proceed with the project review and approval process. Similarly, the NHPA obligates federal agencies to consult with Indian tribes in the Section 106 review process, if a project may affect historic properties (Section 101[d][6][B]); however, the agency or applicant is not required to pay the tribe for providing its views.

When asking a tribe to fulfill the role of a consultant or contractor, that is, when requesting specific information and documentation regarding the location, nature and condition of individual sites, or if requesting that a survey be conducted by the tribe, the tribe would seem to be justified in requiring payment for its services, just as any other contractor (see the Council's Executive Director Memorandum dated July 6, 2001 regarding Fees in the Section 106 Review Process). Under some circumstances, then, the CDF may choose to contract with a Native American group or individual for paid consulting services to help CDF develop information. Those situations may include when:

1. CDF specifically requests a Native American group or individual to conduct a field survey within the CDF project to address a specific issue requiring their expertise, or
2. During an archaeological excavation, when it has been determined by a CDF Archaeologist that Native American expertise is needed, such as when dealing with CalNAGPRA items.

In those instances, the agency or applicant is formally purchasing the services of the tribe or individual.

Ultimately, both state and federal agencies must be able to demonstrate that they made a reasonable and good faith effort. CEQA and Section 106 of the NHPA require consultation with Indian tribes to seek their active participation in the planning process. These laws and regulations, however, do not require CDF or project applicants to pay for consultation. If an agency or applicant attempts to consult with an Indian tribe and the tribe demands payment as a condition of consulting, then the agency or applicant may refuse payment and move to the next step in the review process. In such situations, however, the agency should still document the efforts made to consult with Native Americans.

If, on the other hand, the agency or applicant seeks information or documentation that it would normally obtain from a professional contractor or consultant, then the agency should expect to pay for the work product. In cases where the CDF representative determines that payment for services would be appropriate to implement a CDF project, payment must be arranged within standard administrative processes.

Native American Heritage Commission

NAHC staff member Rob Wood is the point of contact. He can be reached by telephone at (916) 653-4040 or via E-mail at rw_nahc@pacbell.net

The mailing address and phone number for the NAHC is as follows:

Native American Heritage Commission
915 Capitol Mall, Room #364
Sacramento, CA 95814
(916) 653-4082 (office)
(916) 657-5390 (FAX)

Native American Contact List

The Native American Contact List consists of over 200 entries that include all federally recognized tribes with interests in the state, and other California Native American tribal organizations or individuals that CDF has placed on the list based upon demonstrated knowledge concerning the location of archaeological or other cultural resources within California. It is organized by county or portions of a county, although several Native American tribal groups and individuals have interests in multiple counties. In those

instances, the Native American tribal groups and individuals are provided multiple listings in each county or area where they have an interest. CDF shall consult with any Indian tribe that notifies CDF that it wishes to participate in consultation regarding a property of traditional cultural value that may be affected by a project covered by this PA.

The most current version of the CDF's Native American Contact List is posted on the CDF Internet Web Site as the primary means of making the list accessible to users. To find the list, visit the CDF Internet Web Site Home Page at www.fire.ca.gov and click on *Resource Management* (one of the options on the left side), then click on *Archaeology* (one of the options listed on the right). Select *Assistance to RPFs*, then *Native American Contacts*. Here you will find the link to the Word file that contains CDF's Native American Contact List and other supporting materials.

Federal Agencies may recommend revisions to CDF's Native American Contact List using the following procedures. The Federal Agency shall consult with CDF to discuss the possibility of adding certain Native American contacts that are not included on the list. If the omitted contacts can be included, the Federal Agency shall attempt to recruit their participation in the review of CDF Projects, shall assist them in the completion of a CDF application form for this purpose, and shall forward the signed application form to CDF. CDF shall consult with the Native American Heritage Commission (NAHC) pursuant to California's Forest Practice Regulations (see 14 CCR Section 895.1, definition of Native American Contact List), and place the new contact on the list following approval by the NAHC. The Federal Agency may obtain the application form from the CDF Archaeology Program Web Site at the following address: <http://www.indiana.edu/~e472/cdf/contacts/application.doc>

APPENDIX III

CDF CULTURAL RESOURCES PLAN

Procedures for the Identification and Management of Cultural Resources Located on Federally Funded Projects Administered by CDF

A. Introduction

This Cultural Resources Plan was developed as part of a Programmatic Agreement (PA) among the USFS, BLM, USFWS, CDF, SHPO, and the Council regarding cultural resource review requirements for federally funded programs administered by the CDF on nonfederal lands in California. The purpose of this plan is to provide detailed guidance for the identification and protection of cultural resources that may be affected by the projects of the federally funded programs.

B. Qualifications of Personnel

All cultural resource survey, impact assessment, and reporting work carried out under this plan, including the *Preliminary Study* to determine if a cultural resource survey is required, shall be conducted by either a Professional Archaeologist or an Archaeologically Trained Resource Professional working under the supervision of a CDF Archaeologist. The terms *Professional Archaeologist* and *Archaeologically Trained Resource Professional* are both defined in Appendix I of the PA.

CDF is accustomed to utilizing cultural resource survey work conducted by archaeologically trained Registered Professional Foresters (RPFs) during its review of Timber Harvesting Plans (THPs) prepared in conformance with California's Forest Practice Regulations (14 CCR Sections 895.1, 929, 949, 969). During THP reviews, CDF is responsible for reviewing the adequacy of cultural resources survey work completed by RPFs; but, since CDF does not directly supervise this work, CDF's role is regulatory in nature. During these reviews, uncertainty regarding the professional adequacy and reliability of cultural resource work supporting the THP occasionally exists. CDF responds to this uncertainty by making numerous field inspections and developing review questions to be answered by the RPF prior to CDF's approval.

For projects covered by this plan, the relationship between archaeologically trained resource professionals and CDF Archaeologists will be at a high level of technical supervision and oversight by the CDF Archaeologist at each key step in the cultural review process. The CDF Archaeologist shall perform regular and timely quality control, and work review and inspection, both in the office and in the field, and be able to take, or effectively recommend, corrective actions where necessary. The frequency of the review, inspection, and guidance shall take into consideration the cultural resource survey work products previously submitted and the technical complexity of the job, but shall be sufficiently frequent to ensure the accomplishment of work to professional standards. In addition, archaeologically trained resource professionals must maintain their cultural resource training certification from CDF, and must regularly consult with a CDF Archaeologist to receive sufficient guidance and assistance. CDF Archaeologists shall review all work products submitted by archaeologically trained resource professionals and shall provide approval signature on cultural resource survey reports only after investigation and reporting have been satisfactorily completed in accordance with the standards identified in this section and elsewhere throughout this plan.

C. Preliminary Study

The CDF shall perform a *Preliminary Study* of each project covered by this PA (see next page for flow chart). This study will be undertaken by the CDF project manager and the appropriate CDF Archaeologist. If the CDF project manager does not meet the cultural resource training standard described above, the CDF project manager shall appoint a designee that meets those training standards, and this designee shall be familiar with the details of the proposed activities and locations. The purpose of the Preliminary Study is to identify the likelihood for finding cultural resources and whether effects to them are possible. The Preliminary Study shall consider the full range of specific project activities and practices, the location of the project, and other factors such as the possibility that the property has been previously surveyed for cultural resources.

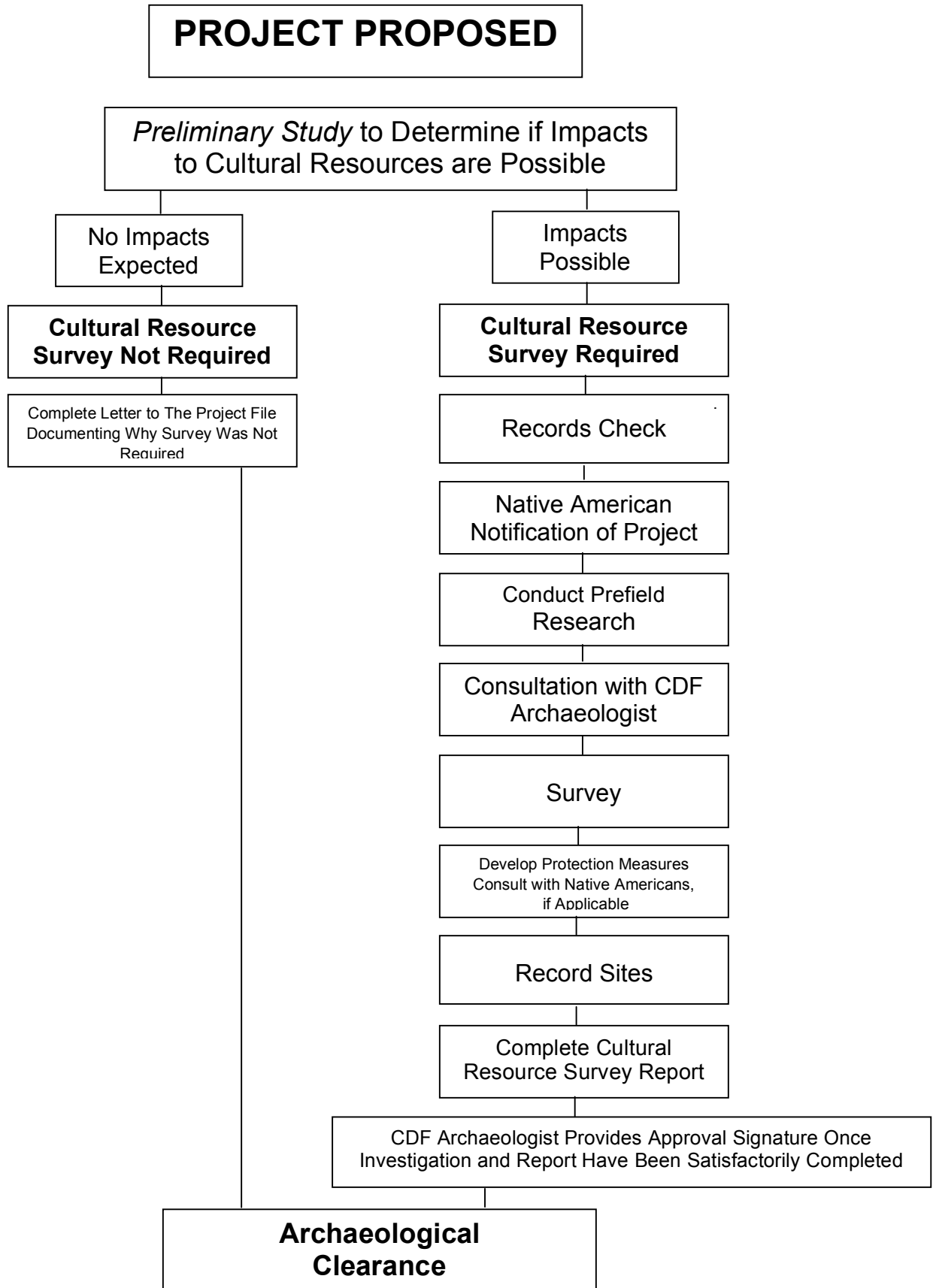
The Preliminary Study will be conducted during a telephone conversation or face-to-face meeting between the CDF project manager and the appropriate CDF Archaeologist. The CDF project manager shall provide the CDF Archaeologist with a copy of the project map(s) if this information is needed to assess the likelihood of the presence of cultural resources. CDF Archaeologists are regularly available on Mondays to participate in telephone consultations and complete Preliminary Studies for projects covered by this PA. The CDF project manager and CDF Archaeologist shall identify and evaluate the full range of project activities and compare those activities to the list of Exempt Practices provided in Section D of this CDF Cultural Resources Plan.

If the Preliminary Study concludes that the proposed project does not have the potential to affect cultural resources, pursuant to the Exempt Practices list in Section D of this CDF Cultural Resources Plan, a cultural resource survey is not required. The CDF Archaeologist must concur with this finding. In such cases, the records check, Native American notification, prefield research, and survey report are not required. Archaeological clearance (a term defined in this PA) shall be given, and documented in the form of a letter to the project file (prepared by the CDF project manager) that indicates the rationale supporting the decision to waive cultural resource survey requirements.

CDF shall conduct an intensive cultural resource survey if the Preliminary Study reveals the potential to affect cultural resources. In most situations, this survey will include all of the procedural steps discussed below and shown on the *Cultural Resource Review Procedures* flow-chart, below. The list of tasks specified in *Section D: Cultural Resource Survey Procedures* shall be completed as part of the cultural resource review for every project determined to have potential to affect cultural resources.

In general, any project that includes ground disturbing practices shall be considered to have potential to affect cultural resources and requires cultural resource survey. Typical examples of such practices include but are not limited to any type of use of heavy equipment to alter the landscape, site preparation, forestland conservation work such as erosion control, road repair, stabilization and abandonment of road beds, improving drainage facilities, or stream bank stabilization. Other projects also require cultural resource survey in spite of limited disturbance to the ground. These include but are not limited to rural tree planting, prescribed burning, broadcast burning, and the burning of slash piles. CDF generally does not fund projects resulting in the planting of commercial species trees within the boundaries of cultural resources. California's forest practice regulations may restrict or prohibit the eventual harvest of such trees since timber harvesting operations can affect cultural resources. For this reason, cultural resource survey shall be required prior to funding most tree planting projects in order to identify and avoid sites.

Cultural Resource Review Procedures



D. List of Exempt Practices

The following practices have been determined to be exempt from the cultural resource survey, investigation, and reporting requirements identified in this CDF Cultural Resources Plan. A cultural resource records check, Notification to Native Americans, prefield research, intensive cultural resource survey, or the completion of a cultural resource survey report are not required for projects that only include these practices.

1. Management Plan: A long term forest and land management plan to assist forest landowners to develop their land management objectives and feasible projects. The preparation of a forest land management plan is not, by itself, a ground disturbing practice and may be funded without a cultural resource survey. In such cases, cultural resource survey must precede any ground disturbing practice called for in the plan. CDF recommends, however, to include some level of cultural resource planning in the management plan itself, such as a record search for the entire property, an overview of local archaeology, ethnography, and history as it relates to predicting the kinds of cultural resources likely to occur, and a discussion regarding future cultural resource survey work and how sites will be managed. This exemption also includes Coordinated Resource Management Planning, Fire Plans, and other forms of broadly scoped planning efforts by CDF that do not result in ground disturbing practices.
2. RPF Supervision: The practice of utilizing a Registered Professional Forester to supervise on-the-ground management activities.
3. Feasibility Studies and Market Analysis: The practice of conducting studies to determine the feasibility of future projects including but not limited to an investigation of the marketability of certain products derived from such projects.
4. Purchase of Tree Seeds and Seedlings: The purchase of tree seeds and seedlings and costs of transporting and storing them. Note: The actual planting of seeds or small seedlings in rural forested areas is not an exempt practice. While such planting may be conducted without significant ground disturbance, CDF generally does not approve funding for projects resulting in the planting of commercial species trees within archaeological site boundaries. California's forest practice regulations may restrict or prohibit the eventual harvest of such trees since the harvesting of commercial size trees is a practice that has potential to damage or destroy cultural resources. For these reasons, cultural resource survey is required prior to funding most tree planting projects in rural forested areas in order to identify and avoid sites.
5. Tree Shelters: The purchase and installation of vexar netting for browse control and shelter cards for shade necessary to assure survival of seedlings.
6. Follow-up (Release): Practices necessary to promote the survival of seed or seedlings within 36 months of planting. Generally work is to control insects, diseases, rodents, weeds or brush competition. This can include use of herbicide, chain saw, weed-eater, or hand-grubbing. These practices are only implemented with tree planting units where an intensive cultural resource survey was completed. This follow-up work is exempt from further review because the cultural resource inventory work does not need to be repeated. If, for some reason, follow-up activities are considered for treatment units that were not previously subjected to intensive cultural resource survey, these activities shall not be considered exempt.
7. Timber Stand Improvement: Precommercial thinning of young commercial tree species to reduce the number of stems per acre. Release of commercial tree species by removing competing noncommercial species of trees and shrubs. Pruning of young trees by removing lower branches from commercial tree species. Work will be done by crews using chain saws.

- Slash just left on the ground, typically lopped and scattered, or collected and removed for biomass utilization. Note: if the slash will be piled and burned, that activity is not exempt.
8. Wildlife Habitat Improvement: The creation of snags, installation of nest boxes, roost poles, platforms, or artificial cavities for animal habitat improvement where the ground is not disturbed.
 9. Reseeding: Hand or aerial applications of seed or nutrients.
 10. Mulch: Hand application of mulch, placement of weed barriers, hay bales, or animal repellent.
 11. Irrigation: Surface installation of trickle irrigation system.
 12. Educational Materials and Events: Production and distribution of flyers, pamphlets, brochures, booklets, newsletters, telephone helpline, videos, etc. Holding meetings, seminars, conferences, classes, etc. to educate and disseminate information to landowners. Funding of CDF staff and contractors to deliver technical assistance to landowners.
 13. Conservation Easement and Fee Title Purchase: Acquisition of easements and fee title purchase of forest lands with the intention of keeping the lands in traditional forest uses and to prevent conversion to nonforest uses. The title will be held by either federal, state, or local government.
 14. Acquisition: Land acquisitions or transfers of administrative control to CDF, where the historic properties received are not considered in exchange for any historic properties relinquished.
 15. Urban Forestry Projects: Purchase and transport of trees and the planting of native and nonnative species of trees in urban settings. Typically, these settings occur in areas previously landscaped such as within public parks or schools. Such projects also occur in street medians and along sidewalks within developed areas. Note: Most of these projects will not require cultural resource survey unless known cultural resources exist in a planning location or the area possesses high archaeological or historic sensitivity. If the urban forestry grant proposes to plant trees in undeveloped wildland settings, such projects are not exempt and will require cultural resource survey. Similarly, the planting of trees suitable for the purpose of creating a windbreak in a rural or agricultural setting is not exempt. Note: trees can be an important part of a historic landscape in either rural or urban areas. CDF should keep in mind that planting new trees in a historic district or on the property of a historic building may affect the setting of that historic property.
 16. Shaded Fuelbreaks: Thinning and pruning of trees, generally along both sides of a road or along the crest of a ridgetop, to create an effective fuelbreak to potentially stop a wildfire, provided such trees are not part of a historic landscape. The accomplishment of such projects involves removal of vegetation by hand, lopped and scattered or chipped and scattered. Note: Shaded fuelbreak projects involving mechanical timber harvesting or the piling and burning of slash are not exempt.
 17. Fire-Safe Projects: Treatment of vegetation surrounding communities to reduce the risk of catastrophic wildfires, through thinning and/or removal of vegetation by crews using hand tools. To be exempt, such projects must involve the chipping and removal of woody material or the chipping and scattering of woody material. Note: Fire-safe projects involving the piling and burning of slash are not exempt.
 18. Disposal of Piled Brush: This activity involves the disposal and removal of brush piles. CDF often administers federal grants to providing chipping service and removal of biomass to homeowners doing their own legally mandated defensible space clearing required by PRC 4291. In these instances, the treatment of the vegetation is not a CDF project and CDF's responsibility for environmental review only pertains to the disposal of brush piles. A chipper may be utilized to chip and scatter woody material near the brush piles, or the brush piles may be collected and transported to a location for biomass utilization.

19. Diseased Oak Removal: Activities related to eradication, gathering and removal of diseased oak trees, limbs and slash from oak trees, including but not limited to infestation zones of *Sudden Oak Death*, without causing significant ground disturbance. Note: Ground disturbing practices such as stump removal, mechanical yarding, or site preparation, or the burning of slash piles, are not exempt activities and will require cultural resource survey.
20. Fuelwood and Christmas Trees: The collection and personal use of fuelwood and the harvesting of Christmas trees.
21. Sign Posts: The installation of sign posts and monuments, when no new ground disturbance is involved.
22. Log Jam Removal: The removal of log jams and debris jams using hand labor or small mechanical devices.
23. One Cubic Meter Disturbance: Activities that involve less than one cubic meter of cumulative ground disturbance per acre.
24. Disturbed Areas: Those activities or projects where the APE is entirely within obviously disturbed contexts, and the disturbance is such that the presence of historic properties is considered highly unlikely.
25. Pesticides: The application of pesticides that do not have the potential to affect access to or use of resources by Native Americans.
26. Existing Borrow Pits: Work within the perimeter of existing material borrow pits. However, expansion of the area of ground disturbance to outside of the existing borrow pit is not exempt.
27. Stream Channels: Activities limited within stream channels. Note: stream channel improvements resulting in alterations to streamside terraces or cut banks along the margins of stream channels are not exempt.
28. Handlines: The creation of narrow handlines using hand tools to establish a burn perimeter. Handlines are often used to keep prescribed fire from entering into an archaeological site. Also includes hand grubbing around trees or near cultural resources to prevent fire from entering or damaging such resources. Activities limited to light brushing of vegetation to expose mineral soil using handtools.
29. Trail Maintenance: Routine trail maintenance limited to brushing and light maintenance of existing tread with hand tools.
30. Road Maintenance: Routine road maintenance and resurfacing where work is confined to previously maintained surfaces, ditches, culverts, and cut and fill slopes along road segments crossing no known historic or archaeological properties. Proposed road maintenance activities within known archaeological or historic sites must be carefully reviewed by the CDF project manager in consultation with the appropriate CDF archaeologist.
31. Hazard Tree Removal: The felling of hazardous trees within recreation areas or other areas for health and safety reasons, provided they are left in place or cut up for firewood using hand tools. Also includes the felling and removal of hazard and wind throw trees from road prisms where deemed necessary for health, safety, or administrative reasons, so long as trees are felled into and removed from within existing road prisms (area clearly associated with road construction, from road surface to top of cut and/or toe of fill) where previous disturbance is such that the presence of historic properties is considered unlikely, and so long as ground disturbance is not allowed off previously disturbed areas associated with road prisms.
32. Road Use Permits: The issuance of road use permits for commercial hauling over existing roads, whenever federal involvement is incidental to activities associated with the permit's purpose and where there are no known effects to traditional cultural properties.
33. Temporary Road Closure: Temporary road closures involving no new ground disturbance.

34. Snow Fences: The construction of snow fences where no new ground disturbance is involved.
35. Existing Nonstructural Facilities: The maintenance or replacement in-kind of existing nonstructural facilities that does not involve new or additional ground disturbance (e.g., maintenance or replacement of cattle guards, gates, fences, stock tanks, guardrails, barriers, traffic control devices, light fixtures, curbs, sidewalks, etc.).
36. Recent Facilities: Activities or alterations involving facilities or structures that are less than 50 years of age.
37. Trash Removal: The removal of trash that does not qualify as a historic property.
38. Installation of Law Enforcement Detection Devices: The installation of law enforcement detection devices within historic properties to assist investigations of site looting and to prevent site vandalism.
39. Purchase of Equipment: The purchase of tools and equipment (such as a chipper) that may be utilized in subsequent projects for the treatment of brush and other vegetation. The purchase of such equipment shall be considered an exempt practice.
40. Project Areas Previously Surveyed: Project activities which are entirely within areas previously surveyed for cultural resources where no cultural resources were found, if the previous survey work was conducted in accordance with the specifications and standards listed in the PA.
41. Other Practices: Other practices on a case-by-case basis as agreed to by the signatories of this PA, pursuant to Stipulation XV.

E. Cultural Resource Survey Procedures

1. Records Check: A *current archaeological records check* (defined in this PA) shall be utilized in project planning. CDF may use an existing records check previously completed for another project on the same property if that records check meets the definition of current (five years) and if all of the current entire project areas were covered in the previous records check. Typically, however, the CDF project manager or designee shall initiate a new archaeological records check specifically for the project being reviewed. It is recommended that the entire parcel be included in the request for a records check so this information may be used if additional projects occur on the same property. This is particularly true if the records check is initiated as part of the forest land management plan being developed. The policies and procedures governing CDF's records checks for projects covered under this PA are outlined in a 1996 Memorandum of Agreement (MOA) between CDF, SHPO, and the Information Centers, which is available on-line at <http://www.indiana.edu/~e472/cdf/checks/moa.html>. Although local CDF project managers will initiate these records checks, CDF Sacramento Headquarters may have established a fund to pay for records check fees charged by the Information Center. CDF project managers are encouraged to contact CDF's Deputy Chief, Forestry Assistance Programs at (916) 653-9450, to inquire about the current availability of funding assistance for records check fees for projects covered under this PA.
2. Native American Project Notification and Information Gathering: The CDF project manager shall send written notification of the proposed project to the appropriate Native Americans listed on the most current version of CDF's Native American Contact List following the procedures specified in Appendix II of this PA. The purpose of this notification is to inform Indian tribes, local Native Americans and the Native American Heritage Commission (NAHC) about the proposed project, soliciting their views and comments about the project. It also serves as an information gathering step. Through this procedure, CDF shall request information concerning the location of any archaeological or cultural sites that may occur within the project area. The NAHC shall complete a check of the Sacred Lands File. CDF shall follow-up and investigate any potential positive

result revealed through this request for information.

3. Prefield Research: The CDF project manager, designee, or archaeologist working on the cultural resources survey shall conduct appropriate levels of prefield research as part of the investigation. The purpose of this research is preparation to conduct the survey, to become familiar with the types of resources likely to be encountered, and to learn about the typical locations where nearby sites are found. It is also useful to interpret, record, and evaluate cultural resource discoveries within the context of local history and prehistory. The investigator shall review records; study maps; read pertinent ethnographic, archaeological, and historical literature specific to the area being studied; and conduct other tasks to maximize the effectiveness of the survey. Additional guidance for the conduct of prefield research is provided in Appendix IV, Suggestions for the Conduct of Prefield Research to Support Cultural Resource Surveys for Federally Funded Projects Administered by CDF, of this PA.
4. Consultation with a CDF Archaeologist: After steps 1 through 3 have been completed, the CDF project manager shall consult with a CDF Archaeologist to review these findings and determine appropriate survey strategy and methods. It will be determined at this time whether or not a CDF Archaeologist is available to assist in the completion of the survey, or if this work will be conducted entirely by an archaeologically trained resource professional.
5. Survey: An intensive cultural resource survey shall be made within the APE of the project area. These surveys shall only be made by a *professional archaeologist*, or an *archaeologically trained resource professional* as defined in this PA. In most cases the work will be done by the CDF project manager, possibly assisted by a CDF Archaeologist. It is possible, however, that the survey work will be completed by a consulting RPF or professional archaeologist retained by the landowner, as part of the grant, or retained by CDF. In all cases, however, the work will be completed under close supervision by a CDF Archaeologist. The objective of this survey is to identify the specific location for all cultural resources within the project area, including but not limited to: historic landscapes (defined in this PA), prehistoric or historic archaeological sites, features, or artifacts, historic buildings or structures, or types of resources that have significant cultural importance to Native Americans such as traditional cultural properties, cemeteries, gathering areas, or sacred sites. In some situations, cultural resource survey work may be delayed until after the project has begun. For example, certain exempt practices may begin without cultural resource survey, and this staggered approach may be necessary to determine the precise location of Areas of Potential Effect for subsequent activities. Fuels reduction projects involving hand cutting of brush and the burning of brush piles are typical examples of the kinds of projects where cultural resource survey may take place after the exact location of the brush piles becomes known.
6. Develop Protection Measures: CDF shall develop effective protection measures for all identified cultural resources located within project areas. These measures may include adjusting the project location or design to entirely avoid cultural resource locations or changing project activities so that damaging effects to cultural resources will not occur. These protection measures shall be written in clear, enforceable language, and included in the cultural resource survey report. CDF shall exercise a strategy of avoiding all adverse impacts to cultural resources. If impacts to cultural resources cannot be avoided, CDF shall consult with the funding federal agency. The funding federal agency shall make a decision to either withdraw federal funding or proceed with 36 CFR 800 consultation for the project, pursuant to Stipulation VI of this PA.
7. Consultation with Native Americans: In the event that *Native American Archaeological or Cultural Sites* (defined in this PA) are identified within a project area, CDF shall notify Native Americans regarding the existence of such sites, provide information regarding the proposed

protection measures, and provide Native Americans the opportunity to submit comments and participate in consultation to resolve issues of concern. Additional guidance for this procedure is provided in Appendix II, Native American Consultation Procedures for Federally Funded Projects Administered by CDF, of this PA.

8. Record Sites: CDF shall record all archaeological or historical sites discovered within project areas. Sites identified during the survey shall be recorded on CDF site forms comparable to DPR 422 for archaeological sites and DPR 523 for historic sites; these forms are approved by the Office of Historic Preservation. This recording work shall be conducted in accordance with the policies specified in OHP's *Instructions for Recording Historical Resources* (1995). Additional guidance for site recording is provided in CDF's *Suggestions for Preparing Archaeological Site Records and Site Maps* (2001). Both of these documents on site recording procedures are available on the CDF Archaeology Web Site at <http://www.indiana.edu/~e472/cdf/suggest/>. Electronic files for all site recording forms are available in Microsoft Word at <http://www.indiana.edu/~e472/cdf/forms/forms.html>. CDF is occasionally requested by Indian tribes and local Native Americans to not record certain types of cultural resources (such as ceremonial or sacred sites) as a condition upon their disclosure. In such instances, CDF will honor the request and not record these types of sensitive cultural resources.
9. Complete Cultural Resource Survey Report: CDF shall ensure that a cultural resource survey report is completed for every cultural resource survey conducted pursuant to this PA. This report will be prepared on CDF's Cultural Resource Survey Report form (see Appendix V, Cultural Resource Survey Report Form Used to Document Cultural Resource Surveys for Federally Funded Projects Administered by CDF) or an equivalent format. A hardcopy of this report form is provided as Appendix V of this PA, and an electronic file in Microsoft Word format is available at <http://www.indiana.edu/~e472/cdf/forms/forms.html>.
10. CDF Archaeologist Provides Approval Signature Following Satisfactory Completion of Investigation and Report: A CDF Archaeologist shall carefully review all cultural resource survey reports prepared for cultural resource reviews of projects covered by this PA. This review shall include elements of completeness, accuracy, content, and professional adequacy. If necessary, this review shall include a field inspection to examine cultural resource discoveries, spot-check areas to test adequacy of survey coverage, and examination of site records in field settings. Most importantly, this review shall include a careful review of the proposed protection measures to ensure that the project has been designed or redesigned to be in full conformance with the provisions of this PA. The CDF Archaeologist shall provide approval signature when the investigation and report have been satisfactorily completed. The CDF Archaeologist shall ensure that a clean, complete copy of the survey report is provided immediately upon completion to the appropriate Information Center for permanent curation; and a copy shall be included in the appropriate CDF project file.
11. Archaeological Clearance: Archaeological clearance shall be given only after all these procedural steps have been completed and documented in the project file. This documentation shall include either a letter to the file or a survey report signed and approved by a CDF Archaeologist.

F. Procedures for Post-Approval Discovery of Cultural Resources and Human Remains

If a cultural resource, including human remains, is discovered within a project area after the project has been approved, the following procedures apply (see Stipulations VII and VIII):

1. Project activities within 100 feet of the newly discovered cultural resource or remains shall be immediately halted.
2. The appropriate CDF Archaeologist shall be immediately notified.

3. CDF shall ensure that a professional archaeologist promptly conducts a preliminary assessment of the inadvertent discovery or affected site to determine if it may be a historic property.
4. If the professional archaeologist recommends the cultural resource may be a historic property, CDF shall develop and implement measures that will secure and protect the property from harm.
5. If the CDF cannot develop and implement such protective measures, it will secure and protect the property while suspending project activities, and promptly provide the funding federal agency with written documentation describing the manner in which CDF has addressed the inadvertent discovery or affected site.
6. The CDF Archaeologist shall notify and consult with the federal agency funding the project, with the SHPO, and with the NAHC and Indian tribes as necessary, and with the landowner as necessary, to come to agreement about documentation and management recommendations, prior to authorizing recommencement of project activities near the newly discovered site.
7. If cultural resources of Native American concern have been discovered or inadvertently affected, the funding federal agency, in cooperation with the CDF, will consult with Indian tribes and Native Americans in accordance with applicable federal law, regulations, and Executive Orders.
8. If the discovery or inadvertent affect reveals human remains, the additional procedures outlined in Stipulation VIII shall also be followed.
9. The CDF Archaeologist shall ensure that the newly discovered cultural materials are recorded and protection measures are documented in the project files.
10. The CDF Archaeologist shall investigate how the project was reviewed for cultural resources to determine if the discovery should have been identified earlier.

G. Private Landowner Involvement

Many of the federally funded projects covered by this PA are located on privately owned lands. The CDF shall respect landowner's rights when implementing this Cultural Resources Plan. This includes notifying the landowner(s) of CDF's cultural resource responsibilities and inviting landowner comments and participation. Landowners shall be notified regarding the scheduling of cultural resource survey or other inspection work carried out by CDF and given the opportunity to comment on and participate in such inspections. CDF shall provide a copy of any completed survey report to the appropriate landowner(s).

H. CDF's Cultural Resources Training Program

The CDF has developed an Archaeological Training Program for Registered Professional Foresters (RPFs) and other resource professionals working on CDF projects. This training program has been certified by the California State Board of Forestry and Fire Protection and codified in the California Code of Regulations (14 CCR 929.4). These regulations read as follows:

To meet the requirements of 14 CCR 929.1, 949.1, and 969.1, cultural resource surveys of Timber Harvesting Plan areas for archaeological or historical sites shall be conducted only by a professional archaeologist or a person who has attended a training program approved by the Director within the past five years. The training program must meet the following standards:

1. The course shall use education materials approved by the Director which address the contents of this article.
2. The course shall require that the applicant demonstrate, in the field, the ability to identify archaeological and or historical sites covered in the course.
3. The Director may conduct the archaeological training courses (in addition to or in-lieu of approving programs conducted by others) at least annually.

The CDF Archaeological Training Course curriculum includes the following units:

- Unit 1: Introduction
- Unit 2: Rules, Regulations, and Procedures
- Unit 3: Examples of Current Archaeological Research
- Unit 4: Overview of California Archaeology
- Unit 5: Site Impacts and Protection Measures
- Unit 6: How to Conduct Cultural Resource Surveys
- Unit 7: Historical Archaeology
- Unit 8: California Native Americans
- Unit 9: Recognizing Artifacts
- Unit 10: Preparation of Survey Reports and Site Records
- Unit 11: Evaluation of Archaeological and Historical Significance
- Unit 12: Archaeological Site Survey Workshop (Field survey)
- Unit 13: Final Written and Field Survey Examination

The one-day refresher course in the CDF Archaeological Training Program (which must be completed every five years) includes the following additional training units:

- Unit 1: Introduction – Course Overview
- Unit 2: Prehistoric Rock Art in Northern California
- Unit 3: Review of Flake Attributes, Rules, and Investigation Procedures
- Unit 4: Review of Site Recognition Skills, Boundaries, Midden, Housepits, and FCR
- Unit 5: Review Site Recording Procedures
- Unit 6: Final Exam – Recording a site to professional standards

The above listed archaeological training standards shall apply to all individuals utilizing this CDF certified archaeological training program to satisfy the requirements contained in this PA and to meet the qualifications of an *Archaeologically Trained Resource Professional* as defined in this PA.

I. Quality Control for Surveys by Trained Resource Professionals

A CDF Archaeologist shall conduct a field inspection of at least 10% of the projects that were surveyed by archaeologically trained resource professionals. The SHPO and Federal Agencies are welcome to join CDF on any of these inspections, by making such a request to the CDF, as long as the CDF has permission and authority to make such inspections on privately owned parcels of land. The purpose of these monitoring inspections is to ensure that the use of archaeologically trained resource professionals, with review by a CDF Archaeologist, is satisfactorily identifying cultural resources within project areas.

J. Procedure Initiating Consultations with SHPO

The following list identifies the possible results of a cultural resource investigation of a project and the procedures for consultation with the SHPO by the federal agency that funded the project:

1. No Cultural Resources Identified: If no cultural resources are found within the project's Area of Potential Effect (APE) during the survey or monitoring work undertaken, CDF shall submit a copy of the negative report to the appropriate Information Center within thirty days of report approval. The SHPO will not be consulted about the project; the project will be included in the annual report.
2. Cultural Resources Identified but Avoided: If cultural resources are found within the project's initial Area of Potential Effect (APE), but CDF changes the project design to either completely

avoid the cultural resource thereby removing it from the revised APE, or changes project activities to avoid any impacts to the cultural resource, CDF will document the site location and avoidance procedures in the Cultural Resource Survey Report sent to the Information Center, but no project specific consultation with SHPO will take place; the project will be included in the annual report.

3. Cultural Resources Identified but Project Cancelled: If cultural resources are identified within the APE of a project and these cannot be avoided, evaluated and treated, CDF shall cancel the project thereby avoiding any effect to the cultural resource caused by a federally funded project. The SHPO will not be consulted if a project is cancelled. If the CDF elects to deny project approval for any reason, CDF retains the option to decide whether or not to complete any unfinished survey report, evaluation report, or site record being prepared for the project. CDF shall attempt to complete such reports and records if this reporting work is sufficiently completed prior to project cancellation and can be completed without conducting additional fieldwork on the property. If the reports and site records are completed, CDF shall provide copies to the Information Center.
4. Cultural Resources Identified but Not Avoided: Due to the high cost of preparing evaluations and the limited funding available for projects, it is not likely that projects would proceed if impacts to cultural resources cannot be avoided. The CDF shall consult with the federal agency funding the project, and the federal agency shall make the decision if the project is to proceed. If, pursuant to Stipulation VI of this PA, the federal agency elects to continue with a project that has the potential to adversely affect a historic property, the federal agency shall initiate consultation for that project with SHPO, and the Council as necessary, pursuant to 36 CFR 800. The provisions of this PA will then no longer apply to that project.

K. Annual Review

During the annual review for this PA, changes in the procedures in this Cultural Resources Plan may be considered. Any changes may be implemented by mutual agreement from the signatories. It is CDF's goal to ensure that the procedures in this Cultural Resources Plan are consistent with the *Archaeological Review Procedures for CDF Projects* (2003).

APPENDIX IV

SUGGESTIONS FOR THE CONDUCT OF PREFIELD RESEARCH TO SUPPORT CULTURAL RESOURCE SURVEYS FOR FEDERALLY FUNDED PROJECTS ADMINISTERED BY CDF

Introduction

The following information was developed to assist CDF project managers during cultural resource reviews of federally funded projects administered by CDF, as a technical appendix to this PA. This information is an adaptation of an article first written in 1993 for the CDF Archaeological Training Manual. This article does not identify all aspects of prefield research that might be appropriate for cultural resource surveys, but rather, focuses on some of the best information sources useful for successful completion of intensive cultural resource surveys.

Purpose of Prefield Research

Prior to conducting a cultural resource survey of a proposed project area, any prudent archaeological investigator should conduct prefield research. The purpose of this research is to get prepared to conduct the survey, become familiar with the types of resources likely to be encountered, and to be ready to interpret, record, and evaluate these findings within the contexts of local history and prehistory. The investigator should review records, study maps, read pertinent ethnographic, archaeological, and historical literature specific to the area being studied, and conduct other tasks to maximize the effectiveness of the survey.

Commonly Used Prefield Research Information Sources for CDF Projects

1. Conduct a current archaeological records check with the appropriate Information Center for the California Historical Resources Information System. CDF has developed forms and procedures for conducting these records checks, and these forms and instructions are also posted on the CDF web site at <http://www.indiana.edu/~e472/cdf/checks/reqform.doc>. The records check request must be submitted on the correct form and accompanied by a map, or maps (including a photocopy of appropriate portion of the USGS 7.5' quad map), that displays the boundaries of the proposed project. The Information Centers will compare the proposed project with the official archaeological records for that county and provide the requestor with information on known archaeological or historical sites within or adjacent to the project, and information about whether or not the area has been previously surveyed for cultural resources. The Centers may also provide an assessment of project sensitivity, and specific recommendations to achieve compliance with CEQA if so requested.
2. If the CDF project is near publicly owned lands such as a National Forest, a State or National Park unit, or BLM property, call the appropriate agency and consult with the agency archaeologist with jurisdiction over those public lands. You may request a supplemental record search, as many times these agency archaeologists are aware of archaeological or historical sites or have access to reports or information not available at the Information Centers. As local experts, they also may provide useful information concerning local site types and local site location patterns.
3. Contact local Native American tribal groups and individuals listed on the current *Native American Contact List*. This list is maintained by CDF with the assistance of the Native American Heritage

Commission (NAHC) and is available on the Native American Contacts page at the CDF Archaeology Program Web Site at <http://www.indiana.edu/~e472/cdf/contacts/NACL.htm>. In addition to sending written notices, it is advisable to attempt to meet directly with these groups and individuals to develop a positive working relationship. You should discuss the proposed project with them and find out if there are any concerns to be addressed. Request information from them concerning any archaeological or cultural sites that may exist within the area. There may be traditional cultural sites of importance (such as gathering areas, special trees, prayer sites, trails, etc.) that may or may not have archaeological remains present. One of the required contacts for every county is the NAHC. By mailing the project notification to the NAHC you will initiate a check of their Sacred Lands file. Mail this request, with a project map and project description to: NAHC, Attention: Rob Wood, 915 Capitol Mall, Room #364, Sacramento, CA 95814. Telephone number is (916) 653-4082 or 653-4040. It is suggested that you also telephone that office to confirm results and seek assistance for further investigations should the NAHC identify a potential sacred site in or near the CDF project area.

4. Review the Government Land Office (GLO) plat maps for the township covering the project area. GLO plat maps accompany the first cadastral survey of the township. Most of these maps date from the 1850s to the 1870s with some as late as 1900. The surveyors often mapped homesteads, cabins, orchards, roads, trails, fencelines, mining areas, etc. that were present during the original survey. If any such features are depicted on the map within what is now the project area, a careful search should be made for surviving remnants of them or of unmapped associated features or artifacts. GLO plat maps are an excellent source to date historic features discovered on the survey. There are surveyor's notes that accompany the plats and these may also be reviewed. GLO plat maps and records may be obtained through the mail or in person at the Bureau of Land Management Office of Survey Records, Room West 1605, 2800 Cottage Way, Sacramento, California 95825. Call first; phone number is (916) 978-4330. Cost is \$1.10 per plat (24' X 36"). Historic GLO plat maps are also kept at many of the Information Centers, and some of these offices can provide a copy of a relevant portion as part of a Complete Records Check.
5. Review pertinent ethnographic literature for the project area. Start with the Handbook of North American Indians, Volume 8, California (Smithsonian Institution Press 1978) to review the chapter on the ethnographic group that occupied the project area. There is a listing of additional sources at the end of each of those chapters. Some of these ethnographic sources contain maps depicting specific village locations.
6. Old Topographic Maps: If you have access to any old USGS quadrangles, it may be worthwhile to review them. Sometimes these maps reveal the locations of old houses, roads, or even Native American Indian sites that are not displayed on current USGS quad maps. As 15 minute maps are no longer published by USGS, these now qualify as old quad maps.
7. Plot the project area on an original USGS 7.5 minute quad map (with vegetation and topographic contours). Study the topography, vegetation, hydrology, aspect, place names, forest openings, etc. and circle those areas deemed most likely to contain a site. Make sure that your survey includes intensive coverage of all circled areas, in addition to adequate coverage of the remaining areas.
8. Aerial Photographs: If these are available, consult a series over time noting changes. This can help date historic structures and assess the types of previous land-use practices, disturbances, etc.

9. Contact and consult with people that may know about the history of the project area or whether or not any sites or artifacts have been found on the property. These may include the current landowner, a previous landowner, the ranch manager, logger, area resident, "old-timer", or any individual who may know about or have done work on the property. Oftentimes these individuals can lead you right to sites that might otherwise be overlooked during the cultural resource survey, or can show you collections from such sites useful to assess their relative significance and antiquity.
10. Review archaeological reports (survey or excavation) for the general area or an overview document if one exists. This will give you a review of the history of archaeology in the area, and a discussion on the cultural chronology, and artifact assemblages. Contact a CDF Archaeologist for assistance in obtaining such a report.
11. Review site records for the closest prehistoric sites to your project area. Find out who recorded them, when they were recorded, the nature of the project that initiated the survey, and what kinds of cultural resources were recorded at the project. Look for site location patterning and the types of artifacts or features being recorded.
12. Review Rock Art literature to see if rock art is common near the project area. The distribution of major petroglyph and pictograph styles is described in Clewlow (1978) (reprinted in the CDF Training Manual).
13. Review the general history of the area being studied. References to check for state-wide coverage include:
 - a. 1000 California Place Names (Gudde 1959)
 - b. California Historical Landmarks (DPR 1981)
 - c. History of California—The Works of Hubert Howe Bancroft (7 Volumes covering the period from 1542 to 1890, reprinted by Wallace Hebbard in Santa Barbara)
 - d. California (Irmagarde Richards 1942)
14. Review any local history books, articles or other sources of information that may be available for the specific area you are investigating. For example: The Men of the Mammoth Forest (Otter 1963) for the southern Sierra Nevada.
15. Consult background references including:
 - a. CDF Reference Manual and Study Guide
 - b. Handbook of North American Indians: Volume 8: California
 - c. Handbook of the Indians of California (Kroeber)

APPENDIX V

CULTURAL RESOURCE SURVEY REPORT FORM USED TO DOCUMENT CULTURAL RESOURCE SURVEYS FOR FEDERALLY FUNDED PROJECTS ADMINISTERED BY CDF

A Cultural Resource Survey Report for the (name of project) (name of county), California

by:

(author's name)
(author's affiliation/title)
(author's mailing address)
(author's telephone number)

(date report was written)

Part 1: Project Information

Project Number:
Name of CDF Project Manager:
Project Size (acres):
Name of 7.5' USGS Quad Map:
Name of Landowner:
Legal Location:
Funding Information:
Project Description:

Part 2: Archaeological Records Check Information

Date of Records Check Conducted by Information Center:
Information Center File Number:
Summary of Records Check Results:

☐ Records Check Request, Map, and written reply from the Information Center are attached
☐ Records Check not attached
Justification:

Part 3: Native American Consultation Information

☐ Example of notification letter(s) (including maps) attached
List of Native American individuals or groups that were provided written notification:
Date of the CDF Native American Contact List that was used:

Date notification was sent:

Results of Information Request:

☐ No reply received as of (date):

☐ Written reply received (copy attached)

☐ Verbal reply received (summarize verbal reply):

☐ Native American archaeological or cultural sites not identified within the project area

☐ Native American archaeological or cultural sites identified within the project area

Date Notification Letters were sent to Native Americans (if applicable):

Date copies of notification letters sent to the Director:

Results of Notification to Native Americans:

☐ No reply received as of (date):

☐ Written reply received (copy attached)

☐ Verbal reply received (summarize verbal reply):

Part 4: Prefield Research

Literature Reviewed:

Persons Contacted:

Summary of Results of Prefield Research:

Part 5: Training and Experience of Cultural Resource Surveyors

Name of current Cultural Resource Surveyor(s):

☐ Cultural Resource Survey conducted by Professional Archaeologist

☐ Cultural Resource Survey conducted by person with current CDF Archaeological Training
CDF Archaeological Training Course #:

Date Training Course was completed:

☐ Cultural Resource Survey for previous project within site survey area previously conducted by
(provide name):

Part 6: Survey Methods and Procedures

Survey strategy:

Time spent conducting archaeological field survey:

Date or Dates the survey was conducted:

Survey coverage intensity:

Ground visibility/other limitations:

Other relevant information:

Part 7: Survey Results

List and description of all sites found:

- ☐ No sites found within the site survey area
- ☐ The following sites have been recorded and completed records are attached:
- ☐ The following sites were previously recorded, updates not prepared (attach copy(ies)):
- ☐ The following sites were previously recorded, updates prepared (attach copy(ies)):
- ☐ The following sites will not be recorded (provide justification for not recording):

Part 8: Evaluation of Significance

Preliminary determination of significance of listed sites (if required):

Part 9: Protection Measures

Specific enforceable protection measures:

Part 10: Implementation of Protection Measures

Discuss actions taken to carry out protection measures:

Part 11: Other Applicable Information

Additional Information:

Part 12: List of Attachments

- | | |
|---|--|
| <input type="checkbox"/> Archaeological Records Check Request | <input type="checkbox"/> Archaeological Coverage Map (1:1 scale of USGS 7.5' quad) |
| <input type="checkbox"/> Archaeological Records Check Request Map | <input type="checkbox"/> Additional Archaeological coverage map(s) |
| <input type="checkbox"/> Information Center Reply | <input type="checkbox"/> Project Vicinity Map |
| <input type="checkbox"/> Example of Notice(s) to Native Americans | <input type="checkbox"/> Written Reply from Native Americans |
| <input type="checkbox"/> USFS or other Agency Correspondence | <input type="checkbox"/> Site Records |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Photographs |

Part 13: Professional Review and Approval

Comments:

Signature of CDF Archaeologist

Date Signed:

Printed name:

Title:

Location:

APPENDIX VI

FEDERAL AGENCY ADDENDUM TO

THE PROGRAMMATIC AGREEMENT REGARDING

CULTURAL RESOURCE REVIEW REQUIREMENTS FOR

FEDERALLY FUNDED PROGRAMS

ADMINISTERED BY THE

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

ON NONFEDERAL LANDS IN CALIFORNIA

WHEREAS, the United States Department of Agriculture, Forest Service, Pacific Southwest Region (USFS), the United States Department of the Interior, Bureau of Land Management, California State Office (BLM), the United States Department of the Interior, Fish and Wildlife Service (USFWS) (collectively referenced hereafter as Federal Agencies), the California Department of Forestry and Fire Protection (CDF), California State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (Council) executed on (ENTER DATE) a Programmatic Agreement (CDF PA) that addresses the Federal Agencies responsibilities under Section 106 of the National Historic Preservation Act , 16 U.S.C. 470f, and Section 110(f) of the same act, 16 U.S.C. 470h-2(f), for their granting of federal funds to CDF for the administration of land management activities on nonfederal lands in the state of California (federally funded programs); and

WHEREAS, the Federal Agencies, CDF, SHPO, and the Council recognized that additional federal agencies that did not participate in the development of the CDF PA may, at some time, provide federal funding to CDF for similar programs and may wish to address their Section 106 responsibilities for their funding of such federally funded programs in coordination with CDF through the procedures established by the CDF PA; and

WHEREAS, _____ has determined that the implementation of the federally funded programs for which it provides funding may have an effect on properties that are included in or are eligible for inclusion in the National Register of Historic Places, and has consulted with the USFS, CDF, SHPO, and the Council pursuant to 36 CFR 800.14(b) of the regulations implementing Section 106, 36 CFR Part 800;

NOW THEREFORE, _____, the USFS, CDF, SHPO, and the Council agree that _____ shall meet its Section 106 responsibilities for its federally funded programs through adherence with the following Stipulations:

STIPULATIONS

_____ shall ensure that the following measures are carried out:

1. _____ shall abide by the terms of the CDF PA for all federally funded programs carried out by CDF that are funded by _____.
2. _____ shall assist CDF to comply with the CDF PA and shall carry out all responsibilities ascribed to the federal agency funding the project.
3. _____ may elect to withdraw its participation in the CDF PA after thirty (30) calendar days' written notice of its intent, stating the reasons therefore, provided that the _____, USFS, CDF, SHPO, and the Council consult to seek agreement on measures that would avoid such withdrawal. Withdrawal by a participating federal agency does not terminate the PA, and any such withdrawing agency is required to comply with 36 CFR 800.3 through 800.7 with regard to individual actions that would otherwise be covered by the CDF PA.
4. This Addendum shall become effective on the date it has been fully executed by the _____, USFS, CDF, SHPO, and the Council.

EXECUTION AND IMPLEMENTATION of this Addendum to the CDF PA regarding federally funded programs evidence that _____ has satisfied its Section 106 responsibilities for all such individual projects of the federally funded programs.

[NAME OF PARTICIPATING FEDERAL AGENCY]

By: _____ Date: _____
[Name and Title of Person Signing Addendum]

U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE:

By: _____ Date: _____
Jack A. Blackwell, Regional Forester, Pacific Southwest Region

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

By: _____ Date: _____
Andrea E. Tuttle, Director

CALIFORNIA OFFICE OF HISTORIC PRESERVATION

By: _____ Date: _____
Dr. Knox Mellon, State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler, Executive Director